

UTILITY RELOCATION INSPECTION PROCEDURES GUIDE FOR REIMBURSABLE WORK

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Introduction

Archeological/Historic Preservation

Construction crews and project engineers should be alert to the presence of:

- properties 50 years old or older,
- archeological artifacts (such as bones, stone tools including arrowheads, pottery),
- features (such as shell or charcoal concentrations, foundations, etc.),
- human remains.

During the Environmental Document preparation phase, the existing and proposed right-of-way is cleared archeologically and historically. The archeological reconnaissance and historical data is included in the environmental document. If the utilities are located within INDOT's existing or proposed right-of-way, it should already have had an archeological reconnaissance. When a utility is located on private property, and the utility is being paid with federal funds for the project work, the National Historic Preservation Act extends the protection of the site to the utility. It will be the responsibility of the utility to have the site cleared by an archaeologist prior to its use.

It is generally not feasible for INDOT personnel to be responsible for verifying that the utility is complying with all appropriate laws when the utility has been delegated the responsibility of complying with all appropriate Laws and Regulations Section by contract. However, if INDOT is aware of or has reason to believe that the utility is violating the law, INDOT does have the obligation to prevent the violation and/or ensure that the utility takes action to comply with federal law relating to historic preservation. If any artifacts or relics are discovered, relevant state and federal law will apply.

If during the utility relocation, artifacts, features, or remains are uncovered, state law requires that the work stop, and that the discovery be reported to the Division of Historic Preservation and Archaeology, IDNR, within two (2) working days. **First notify the Division of Operations Support of the finding, and then report the discovery to IDNR at (317) 232-1646, FAX (317) 232-8036. Do not allow anyone to collect artifacts from the discovery except the appropriate IDNR or INDOT Archeological staff.** If the discovery is of sufficient importance, IDNR may wish to properly excavate the area and have it guarded. If this occurs, contact the Division of Operations Support for guidance.

See Archeological and Historic Section in the Laws and Regulations Section for further information.

Army Corps of Engineers Section 404/Section 10 Permits (U.S.)

Excavation and/or discharges of dredged or fill materials in waters of the United States below the ordinary high water elevation on each bank requires a U.S. Army Corps of Engineer's Section 404 Permit prior to the commencement of construction. Section 404 of the Clean Water Act requires a permit for filling and grading work, mechanized land clearing, ditching or other excavation activity and piling installation. A Section 10 Permit is required for the obstruction or alteration of navigable waters of the U.S. This authority is based on the Rivers and Harbors Act and regulates work riverward or below the ordinary high water elevation of a navigable stream. Navigable waters of the U.S. are those waterways that are now used, or have been used in the past, or may be used in the future to transport interstate or foreign commerce. Engineer Form 4345, *Application for a Department of Army Permit* is used to apply for these permits. Only one application is required should both permits be required. The Corps will issue the appropriate permit and/or letter of permission (Section 10 or Section 404) needed for the activity.

For the Section 404 permit in non-tidal waters, the limits of jurisdiction are as follows:

1. No wetlands* present - jurisdiction is between the limit of the ordinary high water elevation on each bank.
2. When adjacent wetlands are present - the jurisdiction extends beyond the ordinary high water mark to the limits of the adjacent wetlands.
3. When only wetlands are present, the limit of jurisdiction extends to the limits of the wetlands.

Waters of the United States include rivers, streams, creeks, intermittent tributaries, natural ponds, prairie potholes, impoundments, lakes and wetlands. They do not include land that was converted from wetland to cropland prior to December 23, 1985, nor do they include waste treatment systems such as treatment ponds or lagoons designed to meet the requirement of the Clean Water Act.

INDOT is responsible for the proper disposal of items taken from our right-of-way, especially if it is to be placed within waters of the United States, including wetlands. This is true whether the items are placed in INDOT's or on private property. The project engineer/supervisor should ensure that a permit has been obtained, if one is required, prior to approving such disposal.

The Section 404/Section 10 Permit only covers those activities detailed by the plans and the conditions of the permit. If an activity is not shown either on the plans or in the permit conditions themselves, then these activities are not allowed if they occur in the waters of the United States.

Utilities located within INDOT right-of-way must obtain their own permits from the regulatory agencies. They cannot piggyback on INDOT's permit. **The U.S. Army Corps of Engineers has a nationwide permit for Utility Line Backfilling and Bedding (12).** This Nationwide Permit is only appropriate for a Section 404 Permit. The utility line itself will require a Section 10 permit if it is located in navigable waters of the U.S. In the past the regulatory agencies have held INDOT accountable for utilities work within INDOT right-of-way. Make sure that the utility has obtained all appropriate permits prior to allowing them to work within INDOT right-of-way.

The permit must be posted at the construction site. It is the utility's responsibility to be familiar with these conditions, and comply with them at all times.

* 'Wetlands' here means jurisdictional wetlands. A jurisdictional wetlands is an area that has undergone the process of identification and delineation as laid out in the January 1987 *Final Report by the Corps of Engineers Wetlands Delineation Manual*, Technical Report Y-87-1, and found to be consistent with the wetlands requirements of the manual.

See Army Corps of Engineers Section 404/Section 10 Permit (U.S.) in the Laws and Regulations Section.

Asbestos

The presence of asbestos on INDOT bridges occurs on occasion. When it is present, it is most commonly found on **utilities**, gunnite, various joints, and bridge seats.

Prior to the demolition or renovation of bridges, INDOT will undertake an asbestos inspection of the facility. The report of this inspection will be included in the contract. **It will be the responsibility of the utility to notify IDEM and remove or relocate any regulated asbestos containing material that is on their utility line.** No demolition or renovation of bridges can occur until regulated asbestos containing material has been properly removed and disposed of.

See the Asbestos Regulations Section for detailed information.

Construction in a Floodway

Any project involving construction, excavation, or placement of fill within the floodway of any river or stream unless exempted, requires the written approval of the Indiana Department of Natural Resources (IDNR) prior to initiating the activity. A floodway is defined as the channel of a river or stream and those portions of the flood plain adjoining the channel, which are reasonably required to carry and discharge the flood water or flood flow of any river or stream. Typically this is the 100 year floodway. Note that this is a different jurisdictional limit than the U.S. Army Corps of Engineers Section 404 or the Section 401 Water Quality Certification has. Often the floodway is a larger area than the waters of the U.S.

Certain placement of utility lines is exempted from Construction in a Floodway Permit requirements. If the utility relocation is not exempted, then a Construction in a Floodway Permit will be required. Utilities located within INDOT right-of-way must obtain their own permits from the regulatory agencies. They cannot piggyback on INDOT's permit. In the past the regulatory agencies have held INDOT accountable for utilities work within INDOT right-of-way. Because of this, the project engineer should make sure that the utility has obtained all appropriate permits prior to allowing them to work within INDOT right-of-way.

See the Construction in a Floodway Laws and Regulations section for more detailed information.

Endangered Species

Endangered species in the State of Indiana include the bald eagle, Indiana bat/gray bat, Northern (Blind) Cave fish, and mussels. If the utility is relocating entirely within the proposed construction limits, their impact to any endangered species will be covered by INDOT's project's impact. The environmental document and the permit (**Construction in a Floodway Permit issued by the Department of Natural Resources, Division of Water, under the Flood Control Act, IC 14-28-1**) which is included in the contract documents, should mention any endangered species in the area of the bridge project and the protective measures that are required to ensure that no impact is made to either the life forms or their habitat. If a utility is relocating beyond INDOT's project's proposed construction limits, then it is the utilities responsibility to coordinate with the US Fish and Wildlife Service and the IDNR's Division of Fish and Wildlife to determine what must be done to protect the endangered species.

In Stream Blasting Permit

Indiana Fish and Wildlife Code requires that a permit be procured from the Indiana Department of Natural Resources prior to setting, using or discharging dynamite or other explosive in any waters of the State. If a utility proposed to do any in stream blasting, it is their responsibility to obtain the appropriate permit. In the past the regulatory agencies have held INDOT accountable for utilities work within INDOT right-of-way. Because of this, the project engineer should make sure that the utility has obtained all appropriate permits prior to allowing them to work within INDOT right-of-way.

See the In Stream Blasting Section for detailed information.

Lake Preservation Act (Permit)

The Lake Preservation Act mandates that any person proposing to perform an activity at or lake ward of the legal shoreline or average normal water level (mark) of a public freshwater lake must obtain written approval of the Indiana Department of Natural Resources prior to initiating the activity. A *public freshwater lake* is a naturally occurring body of water for which access is provided by the property owner to the general public, **excluding** Lake Michigan, lakes within the city of Hammond, borrow pits, sinkholes, or privately owned water bodies associated with surface coal mining. Most public freshwater lakes are located in the northern part of the state.

If a utility proposed to do any such work, it is their responsibility to obtain the appropriate permit. In the past the regulatory agencies have held INDOT accountable for utilities work within INDOT right-of-way. Because of this, the project engineer should make sure that the utility has obtained all appropriate permits prior to allowing them to work within INDOT right-of-way.

See the Lake Preservation Act Section for detailed information.

Navigable Waterway Permit

A Navigable Waterway permit is required from IDNR when working below the ordinary high water mark within the floodplain of a navigable waterway. This includes any activity which disturbs sediments below the high water mark, including the placement of utilities. A list of navigable waterways is included in the Laws and Regulations Section under Navigable Waterway Permit.

If a utility proposed to do any such work, it is their responsibility to obtain the appropriate permit. In the past the regulatory agencies have held INDOT accountable for utilities work within INDOT right-of-way. Because of this, the project engineer should make sure that the utility has obtained all appropriate permits prior to allowing them to work within INDOT right-of-way.

An IDNR Construction in a Floodway Permit can also serve as a Navigable Waterway Permit. However, exemption from the Construction in a Floodway Permit does not exempt the utility from obtaining a Navigable Waterway Permit.

See the Navigable Waterway Permit Section of the Laws and Regulations Section for further information.

NPDES Permits

A NPDES Permit is required for discharges of contaminated groundwater, which may be encountered during utility relocations. A NPDES permit is also required for discharges from any type of groundwater remediation system. Treated groundwater must meet the effluent concentration limitations of the NPDES permit in order to be legally discharged.

See the NPDES permit regulations section for more detailed information.

Section 401 Water Quality Certification

Excavation and/or discharges of dredged or fill materials in waters of the United States below the ordinary high water elevation on each bank requires a U.S. Army Corps of Engineer's Section 404 Permit and possibly a Section 401 Water Quality Certification prior to the commencement of construction. For non-tidal waters, the limits of jurisdiction are as follows:

1. No wetlands present - jurisdiction is between the limit of the ordinary high water elevation on each bank.
2. When adjacent wetlands are present - the jurisdiction extends beyond the ordinary high water mark to the limits of the adjacent wetlands.
3. When only wetlands are present, the limits of jurisdiction extend to the limits of the wetlands.

Waters of the United States, generally speaking, include rivers, streams, creeks, intermittent tributaries, natural ponds, prairie potholes, impoundments, lakes and wetlands.

Utilities located within INDOT right-of-way must obtain their own permits from the regulatory agencies. They cannot piggyback on INDOT's permit. **The U.S. Army Corps of Engineers has a nationwide permit for Utility Line Backfilling and Bedding (12). IDEM has granted Section 401 Water Quality Certification for this nationwide Permit.** If the

utility cannot use this nationwide permit, they may be required to obtain a Section 401 Water Quality Certification. In the past the regulatory agencies have held INDOT accountable for utilities work within INDOT right-of-way. Because of this, the project engineer should make sure that the utility has obtained all appropriate permits prior to allowing them to work within INDOT right-of-way.

See the Section 401 Water Quality Certification Section of the Laws and Regulations Section for further information.

Solid Waste Disposal

Uncontaminated dirt, rock, bricks, concrete and dried asphalt may be disposed of on INDOT property or in a Municipal Solid Waste Landfill (MSWLF). These materials are not subject to the solid waste regulations. Concrete and dried asphalt may be used as clean fill material. When buried on INDOT property permission must be received from the Project Engineer. The material should be buried where no construction activity will take place. Disposal of the waste materials on private property will require written notification from the property owner. Necessary arrangements shall be made with the owner for obtaining a suitable disposal location. These materials may also be disposed of in a Construction/Demolition landfill site. No material will be disposed of in waters of the US or in a floodway without the proper permits.

Vegetative matter may be disposed of at a Municipal Solid Waste Landfill (MSWLF). This material includes:

- grass;
- woody vegetative matter (i.e.: twigs, branches) that is less than 3 feet in length and is bagged, bundled, or otherwise contained;
- very small amounts of vegetative matter less than 3 feet in length if it is bagged, bundled, or otherwise contained and combined with other solid waste.

See Solid Waste Disposal Section in the Laws and Regulations Section.

Spill Response

Hazardous material releases, oil spills, fish/animal kills and radiological incidents must be reported to Office of Emergency Response, IDEM **(888) 233-7745**. This should occur as soon as action has been taken to either contain/control the extent of the release, or protect persons, animals or fish from harm or further harm. Appropriate response actions for spills occurring on project sites, in order:

1. Identify the spilled material from a safe distance,
2. Contain the spilled material or block/restrict its flow using absorbent booms/pillows, dirt, sand or by other available means,
3. Cordon off the area of the spill,
4. Deny entry to the cordoned off area to all but response personnel, and
5. Contact OER/IDEM then Operations Support.

See Spill Response Section in the Laws and Regulations Section.

Well Abandonment (Oil and Gas)

The procedure for well abandonment is very specific and an inspector from the Division of Oil and Gas, IDNR, **MUST** be present when the well is plugged. If the utility discovers an existing oil or gas well during utility relocation within INDOT right-of-way, they should inform INDOT. INDOT should then comply with IDNR's abandonment requirements.

See Well Abandonment (Oil and Gas) Section, Laws and Regulations Section.

Water Well Abandonment

If the utility discovers an abandoned water well during utility relocation within INDOT right-of-way, they should inform INDOT. INDOT should then comply with IDNR's permanent abandonment requirements. The water well drilling law requires that abandoned wells must be sealed with either a threaded or welded cap over the casing or by filling the well casing with impermeable material. The procedure for well abandonment is very specific and requires a certified well driller. In addition, IDNR, Division of Water, shall be notified in writing of abandonment within thirty days after plugging is completed.

The regulations state, *"A well which has not been used for more than three (3) months without being permanently abandoned must be sealed at or above the ground surface by a welded, threaded or mechanically attached watertight cap. The well shall be maintained so that the well does not become a source or channel of ground water contamination."*

See Water Well Abandonment Section in the Laws and Regulations Section.